

Fair Political Practices Commission

M E M O R A N D U M

TO: Chairman Randolph, Commissioners Blair, Downey, Karlan and Knox

FROM: Steven Benito Russo, Chief of Enforcement
Alan Herndon, Chief Investigator

DATE: May 25, 2004

SUBJECT: Consideration of Revisions to the Streamlined Enforcement Program for
Statement of Economic Interests Non-Filers

Introduction

Throughout its history, the Commission's Enforcement Division has had to grapple with the problem of individuals who fail to file statements of economic interests (SEI's) as required by the Political Reform Act (the "Act") and by the agency conflict of interest codes adopted pursuant to the provisions of the Act. Historically, non-filers were dealt with by the Enforcement Division on a case-by-case basis, without any overall policy directive from the Commission regarding how such cases should be handled. That markedly changed, however, in July 1999, when the Commission approved new standardized and expedited procedures for the Enforcement Division to utilize in dealing with individuals who fail to file statements of economic interests. The focus of these procedures has been bringing SEI non-filers into compliance with the law as soon as possible, and providing a general deterrent to SEI non-filing, while at the same time minimizing the amount of enforcement resources necessary to accomplish these twin goals. The expedited procedures adopted by the Commission in July 1999 have served as the basis for the Streamlined SEI Non-Filer Enforcement Program that has continued to be active to the present.

During the four year period 2000-2003, the Commission has approved the resolution of 123 cases involving individuals who failed to file statements of economic interests as required by the Act. Through these cases, the Commission imposed administrative penalties totaling \$115,450. Most of the cases were resolved through the expedited procedures approved by the Commission in 1999. Although these expedited procedures have allowed the Enforcement Division to resolve SEI non-filing cases more effectively and efficiently than in years past, Enforcement Division staff believes that some minor changes in the adopted procedures would be beneficial in order to administer the Streamlined SEI Non-Filer Enforcement Program more efficiently.

Summary of the Current Streamlined SEI Non-Filer Enforcement Program

In approving the new expedited procedures in 1999, the Commission recognized: the significance of obtaining prompt compliance with the law (i.e. motivating the non-filer to immediately file whatever statements of economic interests are overdue); the importance of supporting filing officials in their efforts to resolve incidents of non-filing prior to involving the Enforcement Division; and the need to resolve SEI non-filing cases expeditiously and efficiently in order to preserve Enforcement Division resources. The key features of the expedited procedures, as incorporated into the Streamlined SEI Non-Filer Enforcement Program are summarized below.

- All referrals received by the Enforcement Division concerning individuals who have failed to file one or more statements of economic interests, excluding leaving office statements, are presumed to warrant prosecution.
- The Enforcement Division retains the discretion to exclude any case from the program based on specific aggravating or mitigating circumstances (such as a prior prosecution for SEI non-filing, a particularly serious SEI non-filing history, SEI non-filing accompanying other violations of the Act, etc.)
- Upon receiving an SEI non-filing referral, the Enforcement Division's assigned investigative staff must attempt to make telephone contact with the non-filer. If contact is made, the non-filer is informed of the importance of filing the statement(s) of economic interests that are reportedly overdue, and advised to file immediately in order to receive no more than the mitigated administrative penalty provided for under the expedited procedures.
- Other than making a reasonable number of attempts to contact non-filers by telephone, no further investigation is conducted.
- All cases are assigned to an Enforcement Division attorney for prosecution. For cases in which the non-filer agrees to a settlement, a stipulation format is used which consists of traditional boilerplate language and an abbreviated exhibit (which usually numbers at least five pages in length).
- Administrative penalties are imposed based on an approved schedule.¹ Other than the amount of effort required to induce the non-filer to file, no other mitigating or aggravating information is considered in determining the amount of the penalty to be imposed in any case resolved through the streamlined enforcement program.

¹ According to this schedule, if the non-filer files the delinquent statement(s) after being contacted by investigative staff, a penalty of \$200-\$300 is to be imposed. Thereafter, if the non-filer files the delinquent statement(s) after being contacted by a staff attorney, a penalty of \$400-\$600 is to be imposed.

Proposed Revisions to the Streamlined Program

After it approved expedited procedures for handling SEI non-filing cases in 1999, the Commission went on to approve expedited procedures for handling late contribution and major donor non-filing cases as well. Those procedures served as the basis for the current Streamlined LCR and Streamlined Major Donor Non-Filer Enforcement Programs. Although the procedures followed under these newer programs are very similar to those that have been utilized in the Streamlined SEI Non-Filer Enforcement Program, there are some significant differences. One major difference is that under the Streamlined LCR and Streamlined Major Donor Non-Filer Enforcement Programs, assigned investigative staff may resolve a case with a non-filer for a scheduled penalty, using a one page *Stipulation, Decision and Order*, without having to refer the case to a staff attorney for action. Experience over the past four years has shown that this approach is a far more efficient use of staff resources. This experience also suggests that expanding the use of a standardized one-page *Stipulation, Decision and Order* to settlements reached by staff attorneys in routine cases such as SEI non-filing cases may also enhance staff efficiency.

Another major difference between the Streamlined LCR and Streamlined Major Donor Non-Filer Enforcement Programs and the current Streamlined SEI Non-Filer Enforcement Program is that the schedule of penalties used in each of the newer programs provides for a greater number of penalty levels, with the penalty amount increasing at each level according to the amount of staff resources required to reach a resolution of the matter. Resolution is defined under the newer programs as persuading the non-filer to file the delinquent statement(s) and reaching a stipulated settlement with the Enforcement Division. Experience over the past four years has again shown that specifying gradually increasing penalties for every additional effort required by staff to resolve a matter effectively encourages the prompt resolution of non-filing cases.

Borrowing from the success of the Streamlined LCR and Streamlined Major Donor Non-Filer Enforcement Programs, Enforcement Division staff is therefore proposing that the settlement procedures and penalty schedule for the Streamlined SEI Non-Filer Enforcement Program be modified as set forth in the following bullet points.

- Incorporate the use of two new one-page *Stipulation, Decision and Order* formats, as set forth in attached Exhibits 1 and 2. Exhibit 1 would be utilized by investigative staff for settlements reached prior to the initiation of administrative proceedings with the issuance of a probable cause report. Exhibit 2 would be utilized by attorney staff for settlements reached after the initiation of administrative proceedings with the issuance of a probable cause report.
- Adopt the following penalty schedule for non-filing cases being resolved under the program. As mentioned previously, the amount of the penalty is determined by the number of contacts that must be initiated by Enforcement Division staff in order to persuade a non-filer to file the statement(s) involved, and to reach an agreed settlement of the matter with the Enforcement Division. At \$100, this

penalty schedule starts with a lower penalty than the current schedule, but also calls for some higher penalties than under the current schedule if the efforts of a staff attorney are required.

TIER	PENALTY	DESCRIPTION
1 ST	\$100	INVESTIGATIVE CONTACT – ONE TELEPHONE
2 ND	\$250	INVESTIGATIVE CONTACT – ONE TELEPHONE AND ONE WRITTEN
3 RD	\$500-\$700	INVESTIGATIVE CONTACT – ONE TELEPHONE AND ONE WRITTEN/ ATTORNEY CONTACT – ISSUANCE OF PROBABLE CAUSE REPORT
4 TH	\$800-\$900	INVESTIGATIVE CONTACT – ONE TELEPHONE AND ONE WRITTEN/ ATTORNEY CONTACT – ISSUANCE OF PROBABLE CAUSE REPORT AND ACCUSATION

Action Requested

Enforcement Division staff is requesting that the Commission approve its proposed changes to the Streamlined Statement of Economic Interests Non-Filer Enforcement Program as outlined above.